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FILED

DISTRICT COURT OF GUAM

APR 27 2007 mba

MARY L.M. MORAN  
CLERK OF COURT

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF GUAM

10 MARESA L. ANDERSON, } CIVIL CASE NO. 07-00003  
11 Plaintiff, }  
12 vs. } ANSWER OF THE UNITED STATES  
13 UNITED STATES OF AMERICA, }  
14 Defendant. }  
15

16 THE UNITED STATES, Defendant herein, submits its answer to the Complaint as  
17 follows:

18 1. ADMITS.

21 2. ADMITS.

23 3. Defendant is without sufficient knowledge to admit or deny the allegations contained  
24 in this paragraph and therefore DENIES same.

26 4. ADMITS that Captain Kirin L. Madden is a member of the United States Air Force  
27 and acting within the scope of her office and employment.

## 5. ADMITS.

6. Defendant is without sufficient knowledge to admit or deny the allegations in  
Paragraph VI.

7. Defendant is without sufficient knowledge to admit or deny the allegations in  
Paragraph VII.

8. This paragraph contains conclusions of law to which no answer is required. To the  
an answer is deemed necessary, defendant Denies the allegations contained in this  
aph.

9. This paragraph contains conclusions of law to which no answer is required. To the extent an answer is deemed necessary, defendant DENIES the allegations contained in this paragraph.

## FIRST AFFIRMATIVE DEFENSE

The United States DENIES any of its agents or employees were negligent and/or breached any standard of care due the Plaintiff and/or engaged in any conduct which was the proximate cause of the injuries, damages and losses allegedly incurred by Plaintiff.

## SECOND AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for prejudgment interest against the United States of America.

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### **THIRD AFFIRMATIVE DEFENSE**

Under 28 U.S.C. § 2412(D)(1)(a), Plaintiff cannot recover attorney's fees from the United States of America.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiffs claim is diminished or completely barred by Guam law regarding comparative/contributory negligence.

## **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff voluntarily assumed the risk of injury.

## SIXTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

## SEVENTH AFFIRMATIVE DEFENSE

All future damages, if any, must be reduced to present value.

#### EIGHTH AFFIRMATIVE DEFENSE

The United States has not waived its sovereignty under the Federal Tort Claims Act ( FTCA), 28 U.S.C. § 1346(b) to include a jury trial.

#### NINTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend its Answer with additional defenses of which it may become aware as discovery progresses and to raise any other matter constituting an avoidance or affirmative defense.

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1 WHEREFORE, having fully answered all counts of the Complaint, Defendant prays that  
2 Plaintiff takes nothing by way of her Complaint against it, that the same be dismissed, and that  
3 judgment be awarded in favor of Defendant, together with costs and such other and further relief  
4 as the Court deems appropriate in this case.

5 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April 2007.

6  
7 LEONARDO M. RAPADAS  
8 United States Attorney  
9 Districts of Guam and NMI

10 BY: \_\_\_\_\_  
11 MIKEL W. SCHWAB  
12 Assistant U.S. Attorney  
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## CERTIFICATE OF SERVICE

I, FRANCES B. LEON GUERRERO, working in the U.S. Attorney's Office, in the District of Guam, hereby certify that on April 27, 2007, I caused to be served by personal service, a copy of the foregoing document, "Answer of the United States", Civil Case No. 07-00003, Maresa L. Anderson v. United States, to the following attorney of record:

Law Offices of John S. Unpingco & Associates LLC  
777 Route 4, Suite 12B  
Sinajana, Guam 96910

Frances B. Leon Guerrero  
FRANCES B. LEON GUERRERO  
Legal Assistant